

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY

3 PATRICK BRADY, ET AL.,

4 Plaintiffs,

5 vs.

CIVIL ACTION
NO. 02-2917 (JEI)

6 ALLIED PILOTS ASSOC.,

TELEPHONE CONFERENCE

7 Defendant.
8

9 UNITED STATES COURTHOUSE
10 ONE JOHN F. GERRY PLAZA
11 4TH AND COOPER STREETS
CAMDEN, NEW JERSEY 08101
THURSDAY, SEPTEMBER 6, 2012

12 B E F O R E: THE HONORABLE JOSEPH E. IRENAS
13 UNITED STATES DISTRICT JUDGE

14 A P P E A R A N C E S:

15 TRUJILLO, RODRIGUEZ & RICHARDS
16 BY: LISA RODRIGUEZ, ESQUIRE
-AND-

17 GREEN JACOBSON, P.C.
18 BY: ALLEN PRESS, ESQUIRE
ATTORNEYS FOR PLAINTIFFS

19 ARCHER & GREINER
20 BY: STEVEN FRAM, ESQUIRE
-AND-

21 KATZ & RANZMAN
22 BY: DANIEL M. KATZ, ESQUIRE
ATTORNEY FOR DEFENDANT ALLIED PILOTS
ASSOCIATION

23
24
25 LISA MARCUS, C.S.R.
CERTIFICATE # 1492
OFFICIAL U. S. REPORTER

1 THE COURT: Our court reporter is here. So first let
2 me have your appearances.

3 MS. RODRIGUEZ: Your Honor, this is Lisa Rodriguez
4 and Allen Press for the plaintiffs.

5 MR. FRAM: Your Honor, good afternoon. Steven Fram
6 of Archer & Greiner for defendants. Also on the line is --

7 PHONE OPERATOR: Excuse me, Daniel Katz has joined.

8 MR. FRAM: My partner John Connell is on the line,
9 your Honor. It sounds like Mr. Katz has just joined us as
10 well.

11 MS. WAGNER: And this is Marta Wagner as the client
12 for the Airline Pilots Association.

13 THE COURT: Okay. ALPA or APA? You're for ALPA?

14 MS. WAGNER: Correct.

15 THE COURT: Okay. I'm going to start. When are the
16 expert's reports due for the plaintiff?

17 MR. PRESS: They're due September 28th.

18 THE COURT: And I can't -- the two of you are now
19 fighting over whether they can take the depositions I allowed
20 after that date, right?

21 MR. PRESS: That's true.

22 THE COURT: You want me to rule on that, is that what
23 you want me to do? You're fighting about that?

24 MR. PRESS: Judge, you gave a very clear Order and
25 then you asked Mr. Fram to write it up, and what we got was

1 something different and so we didn't agree to it. I thought
2 our whole purpose of this was to be expediting as much as we
3 could and so that's -- we were trying to comply with what we
4 believe was your intent.

5 THE COURT: I don't know that they really thought
6 about that issue, but the -- well, let me hear the other side.

7 Mr. Fram.

8 MR. FRAM: Your Honor, what we're trying to do is
9 we're trying to avoid a fight later, which is if we take these
10 depositions and see the reports and think of something that we
11 thought we should have asked or didn't anticipate, we don't
12 have to go back to plaintiff's counsel and say can you bring
13 these people back, can we supplement. We thought at the time
14 of the hearing that it might make sense to go forward. We
15 thought about it further, we've had further discussions, and
16 it seemed to us, given that deferring these depositions is not
17 going to delay things, it seems to us that it makes more
18 sense, it's more efficient and it avoids that fight later on.

19 The other thing I'll mention, your Honor, is that we
20 were hoping to receive documents from the main class
21 representatives.

22 THE COURT: See, that probably should be my first
23 question. There was a demand for documents made back in May,
24 I think.

25 MR. FRAM: Your Honor, May 31st.

1 THE COURT: Right. Is that being complied with?

2 MR. FRAM: Your Honor, it has not. We have gotten
3 some documents within the last couple days by email, but we
4 have not gotten most of the documents and we certainly don't
5 have the documents we would want to review to take any of
6 these depositions, your Honor.

7 MR. PRESS: That's partially correct, Judge. We're
8 missing -- you ordered us to turn over the work history for
9 our clients, which we've done except for one and I've beaten
10 on him and he's promised to provide it today. And that was
11 all supposed to be done in conjunction with taking their
12 depositions, which the defendants show no interest in doing
13 now. But the data has been provided except for one.

14 MR. KATZ: That's not really correct, your Honor.
15 The request for production of documents asks for W-2s and
16 other tax forms for the years 2000 to the present. There have
17 been no tax forms or W-2s for the year 2000 or the year 2001.
18 And with respect to Ted Case there's been no documents at all.
19 With respect to Sally Young there's a list of numbers for 2001
20 through 2011 that Mr. Press emailed to us but no
21 documentation. The request for production of documents also
22 asks for job applications and the like for the people who were
23 furloughed and several of the -- three of the class
24 representatives were furloughed and we don't have furlough
25 notices, recall notices, applications for other employment, a

1 whole host of things that were requested in the May 31st
2 Request for Production of Documents. There's also a request
3 for other documentation relating to the plaintiffs' failure to
4 work during this period of time, like loss of medical
5 licenses, extended sick leave, disciplinary action taken by
6 the company, and these are things that have happened to some
7 of the class representatives and we have no documentation on
8 any of that, so there's been a woeful lack of compliance with
9 the document request. But plaintiffs are still maintaining
10 that these five depositions as well, the depositions of the
11 American Airlines and APA people must be completed by
12 September 28th.

13 THE COURT: This is the first time that I heard that
14 they weren't -- I would have thought that depositions would
15 have been going on long before today.

16 MR. PRESS: So did we, your Honor. There's been no
17 attempt to even put a subpoena on APA or American as far as we
18 know.

19 MR. FRAM: We're still -- I think we have most of the
20 documents but we're still missing some.

21 THE COURT: Look, you guys will always be missing
22 documents.

23 MR. FRAM: Your Honor, with respect to the class
24 representatives, I think Mr. Katz has outlined fairly
25 comprehensively the many documents we don't have. It is a

1 little difficult to --

2 THE COURT: This is 12 years ago.

3 MR. FRAM: What, your Honor?

4 THE COURT: They may not have any of these documents.
5 They can only produce what they have.

6 MR. PRESS: And, Judge, to be fair, you ordered us to
7 produce, and I'm reading from the Order, the work history of
8 those five reps during the period when the integration took
9 place, and I've done that except as to one. So all these
10 other things I didn't -- we didn't even understand that that
11 was part of what you were ordering us to do.

12 THE COURT: I don't remember ordering all those
13 items.

14 MR. FRAM: I think at the hearing, and this was
15 memorialized in the form or Order we submitted, we did
16 specifically ask that the plaintiffs produce the categories of
17 the documents sought in our written document request, that's
18 in Paragraph 3 of the Order -- proposed Order we submitted.
19 And that is a paragraph that plaintiff's counsel agreed to
20 with the exception of our request No. 5, which they said,
21 well, we don't want to produce information that relates to
22 educational things, but I don't think that is actually an
23 issue in dispute. All we're suggesting, your Honor, and I
24 think we certainly opined to sort out these documents issues,
25 is, again, we're trying to avoid a fight later, where if we

1 take these depositions --

2 THE COURT: Well, let's worry about the fight later.
3 As the Bible says, sufficient unto the day the evil thereof.
4 You guys will be so busy avoiding a fight later this case will
5 be three years from now still pending.

6 MR. FRAM: Judge, we don't have a problem scheduling
7 these depositions. I think --

8 THE COURT: I don't want them scheduled, I want them
9 taken.

10 MR. FRAM: Okay. Well, we -- your Honor, we would
11 suggest that you take them shortly after we see the
12 plaintiff's expert reports. If you want to talk about dates
13 now to do that, fine. If your Honor prefers --

14 THE COURT: No, I prefer they start now.

15 MR. FRAM: Okay. Well, your Honor, we don't have the
16 documents we need for the class representative depositions.
17 I'm not sure how --

18 THE COURT: Well, you take with what you got.

19 MR. FRAM: Okay.

20 THE COURT: And --

21 MR. FRAM: Your Honor, if we find out --

22 THE COURT: Basically you're abusing my kindness in
23 opening up discovery again because now you have a generalized
24 document demand and now you define what the generality of it
25 means and then you start asking for everything under the sun.

1 MR. FRAM: Well, no, your Honor, actually we served
2 this document demand back on May 31st and raised it at a
3 couple of the hearings your Honor had. We're simply trying to
4 get basic documents that we think go to the issues in the
5 case. If we proceed with the depositions now, we're certainly
6 going to ask the class reps about other documents that may
7 exist. And if it turns out that other documents exist that
8 are relevant that weren't produced, well, then we're going to
9 have to -- I suppose we're going to have to trouble your Honor
10 with that issue and get into that whole thing. But again,
11 we're trying to be efficient here, your Honor, and minimize --

12 THE COURT: You're being efficient by doing nothing?

13 MR. FRAM: Efficient by taking the depositions at the
14 optimal point in time, which is after we know what the damage
15 theory is, after we've received the documents that I think in
16 any employment litigation, your Honor, are fair game for
17 discovery.

18 THE COURT: By the way, on September 28th are the
19 plaintiffs going to have their report in?

20 MR. PRESS: Yes, your Honor. Judge, I mean, your
21 order was very clear, it said take this discovery from APA and
22 American by September 28th and they've done nothing. And
23 really this is a motion to reconsider is what this really is.

24 THE COURT: Motion to reconsider what?

25 MR. PRESS: The ruling you made on July 31st.

1 MR. FRAM: Your Honor, we cited in the transcript
2 where, I think if you've had a chance to review it, I'm the
3 one who suggested that we might want to take this discovery.
4 If you recall from the prior hearing May 4th, we were told
5 don't take any discovery. Mr. Press even said we don't think
6 it makes sense for the defendant to take any discovery until
7 they know what our damage theory is. So I threw this out as a
8 way for us to try to do something in the meantime to move
9 matters forward. We've now had a chance to rethink it a
10 little bit and we're not sure it is efficient and we don't
11 again want to cause problems later on. We're going to have
12 plenty of time, your Honor, I think, after we see these
13 reports on the 28th with the schedule and take all of this
14 discovery and any other discovery fairly quickly. And our
15 request would be that you simply put the specifics of these
16 depositions on the agenda for the conference that you've
17 scheduled for counsel on October 2nd. And if it makes sense,
18 as I think it will, to take these depositions within a couple
19 weeks after that, then we'll go ahead and do it. We do --

20 THE COURT: Remind me of the deps that the
21 plaintiff -- Mr. Press, what deps are you going to take? The
22 class reps?

23 MR. PRESS: Oh, we're not taking any depositions
24 currently planned, Judge. This was all --

25 THE COURT: I meant, I'm sorry, Fram.

1 MR. FRAM: Yes, your Honor.

2 THE COURT: You plan to take the class reps?

3 MR. FRAM: Yes, your Honor, we plan to take
4 depositions of --

5 THE COURT: Who else?

6 MR. FRAM: -- five class representatives with respect
7 to damages --

8 THE COURT: Okay. Who else?

9 MR. FRAM: -- no one has been deposed with respect to
10 those issues before.

11 THE COURT: Who else?

12 MR. FRAM: And then we talked about taking up to five
13 depositions of representatives of the APA and of American
14 Airlines. And we've got a list of, you know, ten or 15
15 potential deponents, we haven't narrowed that down. Your
16 Honor limited us, if we're going to go ahead, taking up to
17 five and for those depositions to be four hour depositions.

18 THE COURT: Right.

19 MR. FRAM: So we haven't narrowed that down to the
20 five we would take before, because again we really think we
21 need to see what the plaintiffs' report is and not impose upon
22 third parties and say, well, we asked you this group of
23 questions but now we have the plaintiffs' expert report, we
24 need to try to bring you back, that just again causes fights
25 and headaches. These depositions can be scheduled and taken,

1 I think, quite quickly after we see the plaintiffs' report and
2 that's just a more efficient way to do it from our
3 perspective, your Honor.

4 THE COURT: Mr. Press.

5 MR. PRESS: Yes, Judge. The whole thrust of that --
6 what we talked about July 31st was you inquiring what can be
7 done before September 30th. And Mr. Fram said he could do
8 these things, that is to take the five deps from the third
9 parties, take the five class reps, and he said he could do it
10 for September 30th and you ordered it to be done and nothing
11 has been done.

12 THE COURT: How many hours have I allowed for the
13 class reps?

14 MR. PRESS: Four.

15 MR. FRAM: Your Honor, you allowed four hours for
16 deposition of the class reps and four hours for deposition of
17 any APA/American representative subject to our contacting you
18 if we needed more time.

19 But I would have to differ with Mr. Press in terms of
20 the discussion on the 31st. If your Honor's had the chance to
21 review the transcript, I raised the issue of are there things
22 that we might do while we're waiting for the reports. And I
23 thought your Honor was pretty clear when we talked this
24 through that we would be allowed to do things, not that we
25 would be required to do that. One of our problems, and, I

1 don't know, maybe this is an example, at least in my mind, as
2 to no good deed being unpunished, that I threw out the idea of
3 trying to move the case ahead based upon we heard for the
4 first time at the hearing on the 31st. We've now had a chance
5 to think it through more carefully and talk to plaintiffs'
6 counsel and we anticipate the potential problems that we've
7 been assessing and it doesn't seem like such a good idea
8 anymore. We don't see any prejudice --

9 THE COURT: Well, it seems a good idea to me.

10 MR. FRAM: Well, your Honor, I appreciate that. I
11 would submit that there's no prejudice whatsoever to the
12 plaintiffs if we wait until shortly after the --

13 THE COURT: It just drags the case on. It just drags
14 and drags and drags.

15 MR. FRAM: Well, your Honor --

16 THE COURT: The class reps, if they have to come
17 back, they'll come back. I mean, I can look at that issue
18 when it arises. I want those taken in the next week or the
19 next ten days. They should have been taken already.

20 MR. FRAM: Your Honor, can we have a deadline for the
21 plaintiffs to produce whatever documents we're going to get
22 from them? Because the handful of documents we've received,
23 they've come in by email only over the last couple days. And
24 I have to tell you that based upon -- I wrote to your Honor on
25 August --

1 THE COURT: Why such a delay from May -- both of you
2 are just in the guise of fighting with each other conspiring
3 to drag the case out.

4 MR. FRAM: Well, your Honor, I would respectfully
5 disagree with that.

6 THE COURT: Plaintiff, why did you wait till the last
7 few days to give personal information which somebody could get
8 together in a day?

9 MR. PRESS: Because I had just collected enough stuff
10 that made it worthwhile. The day after our July 31st hearing,
11 I sent a letter to Mr. Fram telling him that I need his
12 availability in September for the plaintiffs' depositions because
13 they have to -- if they're flying soon, and so they need to
14 make accommodations to clear their calendars for Mr. Fram's
15 availability in September. And he's going to have all the
16 work history that we were ordered to produce before any
17 plaintiff sits for a deposition, he already has 80 percent of
18 it. So we are not the ones impeding ALPA from doing its
19 discovery and they've done nothing to take any discovery from
20 American and APA. They were granted leave to take five
21 depositions and they have not scheduled one.

22 MR. FRAM: Your Honor, can we go back to depositions of the
23 class representatives?

24 THE COURT: Yup.

25 MR. FRAM: Can we set a date by which we will receive

1 whatever documents the plaintiffs will be producing for the
2 class reps?

3 THE COURT: When are you going to finish your
4 production on that?

5 MR. FRAM: I'm sorry, your Honor.

6 THE COURT: I'm talking to Mr. Press.

7 When are you going to finish production of the May 31st
8 request?

9 MR. PRESS: I hope to have it today.

10 THE COURT: Okay.

11 MR. PRESS: I was assured I would have the remaining
12 class reps' information today.

13 THE COURT: I mean, your clients have to understand
14 that they're now in the hairy phase of the case, the area
15 that's always been problematic in this case, which is how do
16 you -- even if you're correct, as the jury said you were, you
17 know, the problematic area of this case from when I first
18 looked at it now ten years ago, whenever it was, how do you
19 prove damages even if the premise of your case is correct, and
20 you got to produce that information.

21 MR. PRESS: We will, Judge. I'm not trying to drag
22 my feet, just having a little client issue.

23 THE COURT: I don't want to set a deadline because
24 that's just going to be more and then you won't meet the
25 deadline and then I'm going to be asked to extend the deadline

1 and then we have more calls and more time put into the case.
2 I just want it done. Your clients have to realize, if they
3 expect to ever see a dime ever in this case, they've got to
4 deal with a very thorny issue, which is the damage issue, and
5 they have to produce whatever you tell them to produce if they
6 have it.

7 MR. PRESS: Yes, sir. That's what we presented to
8 them.

9 THE COURT: If they don't understand that, they
10 shouldn't be class representatives.

11 MR. PRESS: Well, yeah, I don't --

12 THE COURT: I mean --

13 MR. FRAM: Your Honor, in conjunction with that
14 production, could we request from plaintiff's counsel a
15 response, a written response to our Rule 34 request so they
16 know what --

17 THE COURT: What's that request?

18 MR. FRAM: Our document request. We sent them a
19 document request.

20 THE COURT: You mean in May.

21 MR. FRAM: May 31st.

22 THE COURT: May 31st.

23 MR. FRAM: So, you know, if documents don't exist,
24 for example, in response to some categories --

25 THE COURT: Yeah, but how can we define -- I don't

1 want these laying traps for the unwary. All this paper
2 discovery is all traps for the unwary. It's litigation versus
3 trial work. You know, this is what makes you guys litigators.
4 God forbid you'd have to be in a courtroom and do something.
5 But you're litigators because, you know, we get responses and
6 then we argue the response is not -- I don't even know that
7 the demand you made is so crystal clear that you can say yes
8 or no.

9 I'm telling the plaintiffs you got to produce. You got
10 to produce what they ask for. Do you have any doubt as to
11 what you're asked to produce, Mr. Press? Is there ambiguity
12 that you don't know?

13 MR. PRESS: There's a disconnect between what you
14 ordered produced and what they requested. Their request is
15 much more expansive than simply work history. And again,
16 we've given them the work -- what you've ordered we've given
17 as to four of the five. And the fifth one, I've stepped on
18 his throat this morning and he promised me I'd get it. So,
19 but again their document requests themselves, Judge, are much
20 more expansive.

21 THE COURT: Like what's in the document request?

22 MR. PRESS: They want to see job applications, they
23 want to see training courses they've gone through, if they've
24 gone to college, they want their transcripts and course
25 materials that they received, it's all kinds of stuff.

1 MR. FRAM: Your Honor, Mr. Press has said a couple
2 times that your Honor ordered work histories to be produced.

3 THE COURT: Well, it's whatever's in the Order.

4 MR. FRAM: Well, we have no Order, we're going back
5 and forth about the Order. I think we were fairly clear on
6 June 31st, your Honor was clear.

7 THE COURT: May or June?

8 MR. PRESS: It was July.

9 MS. RODRIGUEZ: July.

10 MR. FRAM: I'm now mixing months. Yes. We have the
11 transcript, it was July 31st. I thought your Honor was clear
12 that they were to produce the documents that we requested in
13 our written request, we talked about the May 31st request. We
14 subsequently spoke to plaintiff's counsel and confirmed that
15 they were agreeing to produce everything with the exception of
16 what had been requested in No. 5 and that's what led to my
17 preparing and sending to your Honor this form of Order that
18 specifically refers to that in Paragraph 3. I don't know if
19 your Honor has that close at hand.

20 THE COURT: I do, I think.

21 MR. FRAM: But if you look at the second -- I'm
22 sorry. If you look at the last sentence, your Honor, of
23 Paragraph 3, in preparation for said depositions plaintiff
24 shall produce by August 24th. This is something they agreed
25 to, your Honor, they were going to produce this by

1 August 24th. We're now seeing some minimal material just
2 within the last couple days. So again, we want to review it
3 to avoid problems at the deposition. I don't want to start a
4 deposition, your Honor --

5 THE COURT: No, you don't want to start anything.
6 You'd be happy if this case was pending five years from now.

7 MR. FRAM: Your Honor --

8 THE COURT: Please.

9 MR. FRAM: I don't want to find out in a deposition
10 that there are --

11 THE COURT: If you find out, then we can produce
12 them. I want these depositions taken. This case has got to
13 move forward. You guys will fight over paper discovery till
14 the cows come home. I'll say you get discovery of this,
15 you'll go back to your office, you'll see how you could try to
16 expand it within the parameters and list all kinds of things.
17 Who has old job applications? Nobody has that. You know,
18 maybe somebody has it, maybe they don't. You'll drag this out
19 for the next five years arguing. If I let you, you would do
20 it for ten years.

21 MR. FRAM: Well, your Honor, I would submit to your
22 Honor I'm the one who suggested at the July 31st hearing that
23 there's things you might do. Your Honor didn't mention it --

24 THE COURT: All right. I want it done. I want
25 these -- within the next two weeks I want the class

1 representatives to be deposed. And if you start on some of
2 the American people, you can start on those.

3 MR. FRAM: All right. We'll make that effort, your
4 Honor.

5 THE COURT: What do you mean you'll make the effort?
6 You'll do it. You're not going to make the effort, you'll do
7 it.

8 MR. FRAM: Your Honor, just said that you wanted us
9 to try to start on those. We obviously have to rely on the
10 cooperation to some degree of third parties. So we'll contact
11 them --

12 THE COURT: Well, you don't need third parties for
13 the class reps.

14 MR. FRAM: Absolutely, your Honor.

15 THE COURT: Those could be done.

16 MR. FRAM: Understand that, your Honor.

17 THE COURT: As to the others, yeah, you probably will
18 need to -- that's why I'm saying I want the five done
19 immediately, certainly, you know, probably by the 20th or the
20 21st, something like that. Today is the 6th, I think, so
21 tomorrow is the 7th, so by the 21st I'd like to see all five
22 of them done. Hey, they want to burden the courts with this
23 litigation, burden the lawyers, run up fees. The class either
24 is serious about their case or they're not. I don't want to
25 hear that some particular class rep has a vacation, I don't

1 want to hear it, don't ever tell me that. I want these
2 depositions now done by the 21st for the five class reps. I
3 want to at least start figuring out -- you know, and there's
4 got to be some American people you can take. I don't know,
5 you don't have to go through the bankruptcy court, do you?

6 MR. FRAM: No, your Honor, these would be
7 individuals, the witnesses would be individuals.

8 THE COURT: Yeah, I mean, individuals could be
9 subpoenaed. Let's start doing it. Let's start doing it.

10 MR. FRAM: Yes, your Honor.

11 THE COURT: And even in terms of, like, you talk
12 about educational courses, well, you have four hours of
13 deposition, what the hell are you going to ask? Those are the
14 questions you can ask. Did you go to any classes? Did you
15 take any training? Did you do this? Did you do that? You
16 know, paper discovery is just a tool that lawyers use to
17 extend -- to drag litigations out and drive up huge fees,
18 that's all that is.

19 And let's get these depositions going. Let's get the
20 five done by -- it was five, right? Five class
21 representatives. Let's have them done by the 21st. And I'm
22 not going to put any specific deadlines on the others but I'd
23 like to see at least some of them done, you know, before the
24 28th. This case has to get moving, and I'm not going to let a
25 fight over what the meaning of paper discovery or what I had

1 in my head four months ago when I ordered discovery in a
2 certain area and the lawyers go home and one set of lawyers
3 tries to narrow it as much he can narrow it and the other one
4 tries to expand it as much as he can expand it and then you
5 say, well, Judge you intended this. No way.

6 MR. FRAM: Judge --

7 THE COURT: The case has to start moving now.
8 There's got to be depositions next week and early next week of
9 at least a couple of the class representatives. This case has
10 to start moving.

11 Why is there silence? Is everybody stunned by the
12 thought that the case has to move?

13 MR. PRESS: No, your Honor. When we were last
14 together, you ordered us or instructed us that this should be
15 done in a cooperative fashion, the scheduling of all these --

16 THE COURT: I did, but I'm not seeing anything that
17 looks remotely like cooperation.

18 MR. PRESS: Well, the day after when I got home, the
19 next day I wrote to them saying give me your dates in
20 September so we can do this in an orderly way. And here we
21 are September 6th and now we're ordered to produce them all in
22 the next 15 days.

23 THE COURT: On a what, on an eight year old case?
24 How outrageous of me.

25 MR. PRESS: No, Judge, I'm not saying that, and I

1 wish we already had them scheduled. But now -- you know,
2 we'll do what we have to do.

3 THE COURT: Do your clients understand that this is
4 not a leisure time activity they're in?

5 MR. PRESS: Of course they do, Judge, this is very
6 serious to them.

7 THE COURT: I can remember litigating the Williams
8 Zack takeover case, a big one, over a weekend, which included
9 two appearances before the Third Circuit. I mean, when people
10 have to move fast, they can move fast.

11 MR. PRESS: Judge, I'm confident that we can get --
12 we can -- I'm very hopeful we can get all of them. Because
13 they all come into St. Louis to fly, one of them lives here,
14 so we'll just have them come in a couple hours earlier than
15 they normally would and sit for a deposition and I'm very
16 hopeful it all can be done. Well, you're ordering it be done
17 so...

18 MR. FRAM: Your Honor, we'll certainly work with
19 counsel to try to agree on dates.

20 THE COURT: We have an Order that says the
21 depositions were to be done by the 28th, although there's a
22 dispute even there as to what that Order means.

23 MR. FRAM: Your Honor, we don't have an Order, we
24 have a proposed form of Order. And that's why we had to ask
25 your Honor to get involved because we had a disagreement about

1 whether they had to be done by then or whether they could be
2 done by then, you've now resolved that.

3 THE COURT: Mr. Press, do you have the Order in front
4 of you?

5 MR. PRESS: I have the transcript and your
6 instructions, yes, I do.

7 THE COURT: The Order, the proposed Order and what's
8 called Case Management Order, Mr. Fram's draft Order?

9 MR. PRESS: Oh, his proposal?

10 THE COURT: Yes.

11 MR. FRAM: Your Honor, it's what we filed and
12 circulated on August 23rd with my letter.

13 THE COURT: I have it in front of me, it came
14 August 23rd.

15 Mr. Press, what do you object to in this Order?

16 MR. PRESS: Principally the --

17 THE COURT: Do you object to Paragraph 1?

18 MR. PRESS: Well, this -- I interpreted this language
19 as trying to box us into something. And I propose that simply
20 say we're going to disclose our expert's reports as required
21 by Rule 26, I don't think it needs to say any more than that.
22 I was fearful that somehow we were getting boxed in with the
23 language they were proposing. The main objection we have,
24 though, was that --

25 THE COURT: Why was this draft Order so late after we

1 discussed it? This was August 23rd, that's like a month and a
2 half after we had our conference.

3 MR. FRAM: Your Honor, counsel would agree on most of
4 the issues and, indeed, Paragraph 1 we specifically agreed on,
5 I have an email from Mr. Press back to me saying I agree to
6 that Order with these handful of exceptions. The reason why
7 there was a delay was when we couldn't agree on a handful of
8 issues, we ordered the transcript immediately and there was
9 delay in our getting the transcript, I believe your Honor was
10 on trial, counsel in that trial was ordering expedited
11 transcripts.

12 THE COURT: You can't even agree now as to what you
13 disagree on.

14 Mr. Press, what is it about Paragraph 1 that you now
15 don't -- did you once tell him you agreed to it?

16 MR. PRESS: No. No.

17 MR. FRAM: Your Honor --

18 MR. PRESS: I'm looking at the instructions you gave
19 us and you summed up the whole day in a matter of 20 lines in
20 the transcript.

21 THE COURT: Yeah, I have the transcript here.

22 MR. PRESS: Page 57, Judge.

23 THE COURT: I have Page 57.

24 MR. PRESS: You laid it all out. This should have
25 been a simple three line, four line order, I don't know why it

1 became so convoluted. But as to the Order -- where was it?
2 "I expect to set forth --" the fourth line. "I expect to set
3 forth the basic methodology. Even if we don't have all the
4 numbers, it's certain rule on mitigation. We won't even have
5 the proper offset at that point but that shouldn't stop having
6 a basic philosophy, I don't know if that's the right word, of
7 how we're going to decide how the list would have been
8 integrated." And so that was what I understood you wanted us
9 to do, but what they wrote up to me seems something different
10 and I saw a trap in there for me and my clients so that's why
11 we didn't agree to it.

12 THE COURT: Said reports shall identify by name
13 either -- you don't have a right to dictate what their
14 report's going to say.

15 MR. FRAM: Your Honor, we were relying upon the
16 colloquy from the hearing.

17 THE COURT: Oh.

18 MR. FRAM: That's what the transcript said. And I
19 have an email, I can probably find it pretty quickly. I have
20 an email from Mr. Press confirming his agreement to that form
21 of Order so I'm very surprised to hear him now say that he
22 doesn't agree to Paragraph 1. The only part of Paragraph 1
23 that he wanted to be changed is he wanted the insertion of the
24 word reasonably, you see that's in brackets at the top of Page
25 1. This is something you wanted us to agree on an Order, we

1 sent drafts back and forth, had a couple phone conversations
2 and that Order is what resulted. If you were interested, I
3 could send you the trail of emails where Mr. Press wrote back
4 and said, yeah, we agree.

5 MR. PRESS: Well, no, you just mentioned our
6 disagreement, but I was trying to come to an agreement with
7 you and you wouldn't, so --

8 MR. FRAM: Your Honor, we agreed except for the three
9 issues that were identified in my letter, the issue about
10 whether we had to take depositions before or were given the
11 option, your Honor's resolved that. And then we had two other
12 minor issues that are referred to on the last page of our
13 letter. So I hope I'm not going backwards, your Honor, in
14 terms of what's supposed to happen leading up to
15 September 28th. Would it be helpful, your Honor, if I sent
16 you the email exchanges so you could see what the back and
17 forth was?

18 THE COURT: No, I'm not going to get into who struck
19 who, we'll be here till next December on a simple procedural
20 Order. Neither of you guys can be trusted to work together in
21 an efficient way and move the case forward, you just can't be
22 trusted.

23 MR. FRAM: Well, your Honor, I'm disappointed to hear
24 you say that, we made a good faith effort.

25 THE COURT: Here, such reports shall detail

1 plaintiffs' -- you can't dictate what their reports are going
2 to say, they may come up with whatever. And his expression
3 you tried to box him in would have been a "but for the alleged
4 heretofore said reports shall identify by" -- you can't do
5 that.

6 MR. FRAM: Your Honor, that's --

7 THE COURT: You can't dictate what's going to be in
8 their report.

9 MR. FRAM: Your Honor, we're not trying to. We're
10 simply trying to memorialize what your Honor indicated --

11 THE COURT: I didn't say any of that.

12 MR. FRAM: Your Honor, I respectfully disagree. I
13 think we can refer you as to points of the transcript where
14 your Honor summarized what these reports were supposed to do.
15 If you recall, your Honor, the Court's directive to
16 plaintiffs' counsel at the May 4th hearing was final damage
17 reports. When we came in on the 31st, they said, well, your
18 Honor, we can't give final reports, we're going to give a
19 preliminary report that is going to give you a "but for the"
20 and that's going to give the total number but then we have to
21 go back and get more information. So we were simply trying to
22 memorialize in that paragraph the nature of the report so that
23 from our perspective it didn't change again. We've gone from
24 full reports by a date in August, they came back and said we
25 can't do it, now we're in a two stage process for reports. So

1 we just wanted some clarity in terms of what the general
2 parameters of what that report will be. We're not trying to
3 box them in, your Honor, other than to summarize what was
4 discussed and what your Honor directed at the hearing on
5 July 31st.

6 THE COURT: What about Paragraph 2?

7 MR. PRESS: No, there's no objection.

8 THE COURT: Okay. What about 3?

9 MR. PRESS: Yes, the notion that depositions won't be
10 concluded by the 28th. You were very clear, you wanted
11 this -- at least on July 31st you wanted this done by
12 September 28th and so that's why we didn't agree to that.

13 MR. FRAM: Your Honor has now resolved that issue, I
14 think it's now been ordered that those depositions shall be
15 taken by September 21st. Your Honor?

16 THE COURT: I'm just thinking for a minute.

17 MR. FRAM: I'm sorry, the line went completely
18 silent, I was afraid I got completely cut off.

19 THE COURT: What about 4?

20 MR. PRESS: We have the same problem with that, we
21 understood that that discovery was to be concluded by the end
22 of this month.

23 THE COURT: I'm sorry, what's your problem? I'm
24 trying to understand what you just said.

25 MR. PRESS: Judge, you ordered them to complete

1 discovery from American and APA by September 28th.

2 THE COURT: Yeah.

3 MR. PRESS: And their proposal says that they can
4 take that discovery after September 28th.

5 THE COURT: That's what you object to.

6 MR. PRESS: Yes, sir.

7 MR. FRAM: Your Honor, if I may.

8 THE COURT: What about 5? Where does amending Rule
9 26 disclosures --

10 MR. FRAM: I'm sorry, your Honor, I missed the first
11 part.

12 THE COURT: Paragraph 5, is there a disagreement
13 about that? And why is it in here to begin with?

14 MR. PRESS: I don't know.

15 MR. FRAM: It's something that counsel discussed and
16 agreed to, your Honor.

17 THE COURT: Why did you want to stick it in,
18 Mr. Fram? Something in your little brain was telling you you
19 wanted to do that? Why did you want that?

20 MR. FRAM: Your Honor, plaintiff's counsel asked for
21 it. No. 5 was have ALPA amend our disclosures. They said we
22 amend your disclosures, they said --

23 THE COURT: Mr. Press, did you ask for that and, if
24 so, why?

25 MR. PRESS: I did and you ordered it, Judge. Again,

1 same Page 57 of the transcript, he will provide you with Rule
2 26 type disclosures. So I don't have a problem with that
3 provision.

4 THE COURT: The both of you agree with 5?

5 MR. FRAM: Yes, your Honor.

6 MR. PRESS: Yes.

7 THE COURT: Okay. Then it will stay in.

8 Now what about 6?

9 MR. FRAM: 6 is something that counsel discussed and
10 plaintiffs' counsel agreed that, yes, they should amend their
11 Rule 26 disclosures so that we understood who their fact
12 witnesses were. They'll do that, they've agreed by
13 September 28th.

14 THE COURT: Do you agree to that, Mr. Press?

15 MR. PRESS: Yes.

16 THE COURT: Okay. All right. Here's how the Order's
17 going to read.

18 Paragraph 1: No later than September 28th, 2012,
19 counsel for plaintiff shall serve expert damage reports, I'm
20 putting the word damage in after expert, expert damage reports
21 for either or both of the two experts previously identified by
22 them. Said reports need not identify at this time the amount
23 that the class members for who damages are sought actually
24 earned during any period for which damages are claimed.

25 That's Paragraph 1. Everything else you have in there

1 I'm taking out. We'll have this for you probably by tomorrow.

2 2. It's okay as is.

3 3. The second word "may" is changed to "shall." The
4 August 24th date for producing the documents is changed to
5 September 11th. And that's Paragraph 2.

6 Paragraph 4 is the "may" -- the second word "may" is
7 turned to "shall." And the date of September 28th in the
8 second line is changed to October 10th. And then the phrase
9 "or it may defer all third party," that's crossed out, the
10 rest of it stays the same.

11 And then everybody agrees to the rest of it. Do you
12 want to go over that again?

13 MR. FRAM: I think we have it, your Honor.

14 Is your Honor going to mark the Order and file it or
15 would it be helpful --

16 THE COURT: No, I'm going to retype it because if I
17 let you retype it, there will be new things that pop up in
18 there that weren't there before.

19 MR. FRAM: We have it in Word, your Honor, if it
20 would be helpful, we could email it to chambers to save your
21 staff having to retype it.

22 THE COURT: Meaning so that I could just doctor the
23 one you did up?

24 MR. FRAM: Yeah.

25 THE COURT: Mr. Press, well, did I speak too fast, do

1 you have what I said?

2 MR. PRESS: I do.

3 THE COURT: Okay. I'm going to go over it -- because
4 No. 1 is the only one that any major surgery was done to.
5 It's "no later than September 28, 2012, counsel for plaintiff
6 shall serve expert damage reports," or expert reports on
7 damages, however you want to do it, I just want the concept of
8 damages in there, "for either or both of the two experts
9 previously identified by them." You then cross out the rest
10 of that page and the next three-and-a-half lines of the top of
11 the next -- on Page 2. You then pick up, "said reports need
12 not identify at this time the amount that the class members
13 for whom damages are sought actually earned during any period
14 for which damages are claimed." And then the last sentence is
15 knocked out.

16 Do you have that?

17 MR. PRESS: Yes.

18 THE COURT: Paragraph 2 there's no change.

19 For Paragraph 2 the second word "may" becomes "shall."
20 August 24th becomes September 11th.

21 Paragraph 2 the second word "may" becomes "shall" and
22 the second line September 28th becomes October 10th. And the
23 phrase "or it may defer the taking of all third party
24 depositions until after September 28th," that's taken out, and
25 the rest of it there's no change. Okay?

1 MR. FRAM: Yes, your Honor. If you want us to email
2 this.

3 THE COURT: Yes. Do you want to email it today just
4 so that we can doctor it up? We will make a decision how to
5 do it but it can't hurt for me to have it.

6 MR. FRAM: Your Honor, I think I understand clearly
7 your changes and I'll just make the edits and email it with a
8 copy to Mr. Press.

9 THE COURT: No, I want to make the changes.

10 MR. FRAM: Okay. We'll email it to chambers.

11 THE COURT: Just email a copy. You said it's in
12 Word?

13 MR. FRAM: Yes, your Honor.

14 THE COURT: We have Word Perfect, but it's
15 convertible, the machine does it automatically. Send it to
16 me, we'll make the changes tomorrow morning and get it to you
17 by tomorrow.

18 MR. FRAM: Yes, your Honor.

19 THE COURT: We still have our conference October --
20 what date is that?

21 MR. FRAM: 2.

22 THE COURT: October 2nd. Now, that was going to be
23 an in person conference, wasn't it?

24 MR. FRAM: Yes, your Honor.

25 MR. PRESS: Yes.

1 THE COURT: Okay. So we'll see you on October 2nd.
2 I hope and pray that by that time we'll have an expert's
3 report, we'll have taken at least all the depositions of the
4 class reps, some of the depositions of the American
5 Airline/APA folks and there still will be a week or so left to
6 finish those.

7 DEPUTY CLERK: Can we set a time for the conference
8 on the 2nd?

9 THE COURT: What time? Did I set a time for the
10 conference? 10:00?

11 MR. PRESS: 2:00, your Honor.

12 THE COURT: 2:00.

13 DEPUTY CLERK: I recall now.

14 THE COURT: That's fine with me. 2:00 is fine. That
15 must be a Tuesday or Thursday then.

16 DEPUTY CLERK: Tuesday.

17 THE COURT: That's fine. Anything else, folks?

18 MR. FRAM: No, your Honor. Thank you very much.

19 THE COURT: Mr. Press?

20 MR. PRESS: Nothing from us, Judge.

21 THE COURT: Ms. Rodriguez?

22 MS. RODRIGUEZ: No, your Honor.

23 THE COURT: Is Mr. Jacobson there?

24 MR. PRESS: No.

25 THE COURT: Is Mr. Katz there?

1 MR. Katz: I'm here, your Honor.

2 THE COURT: Say something, I miss hearing your voice,
3 the voice of sweet reason.

4 MR. KATZ: I have nothing to contribute at this time,
5 your Honor.

6 THE COURT: You have nothing to contribute at this
7 time?

8 MR. KATZ: No.

9 THE COURT: All right. That's not like you, you
10 usually have something to contribute.

11 MR. KATZ: I'll try to think of something by
12 October 2nd.

13 THE COURT: Okay. Why don't you do that. At least
14 you're the person closest in age to me.

15 MR. KATZ: I think we're very close in age.

16 THE COURT: So that's something, the fact that you're
17 still here working.

18 MR. KATZ: I consider it a blessing every day.

19 THE COURT: I consider it a blessing every ten
20 minutes. Okay. I'll see you all. So long.

21 (Proceedings Concluded)

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C E R T I F I C A T E

I, LISA MARCUS, Official Court Reporter for the United States District Court for the District of New Jersey, Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcription of my original stenographic notes to the best of my ability of the matter hereinbefore set forth.

S/Lisa Marcus, CSR
LISA MARCUS
Official U. S. Reporter
N.J. Certificate No. XI01492

DATE: September 10, 2012

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